**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**AT JAIPUR BENCH, JAIPUR.**

**S.B. Civil Misc. Appeal No.1308/2006**

**Navneet Kumar V/s Gokul Chand & Ors.**

**Date of Order : 5th December, 2006**

**HON'BLE MR.R.S. CHAUHAN, J.**

Mr.Prashant Sharma, for the appellant.
Mr.J.P. Goyal, for the respondents.

**By Court**:

The plaintiff-appellant has challenged the order dated 12.12.2005 passed by the Additional District Judge (Fast Track), Baran whereby his application under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure (henceforth to be referred to as 'the Code', for short) was dismissed.

Briefly, the facts of the case are that the appellant-plaintiff had filed a suit for declaration and permanent injunction wherein he had pleaded that he is a member of Hindu Undivided Family. However, some of the respondents sold part of the joint property to the other defendants. Thus, he had prayed for cancellation and declaration of

the sale deeds and for permanent injunction. Along with the said suit, he had filed an application under Order 39 Rule 1 & 2 of the Code for temporary injunction. The defendant-respondents had filed their written statement wherein they denied the averments made by the plaintiff-appellant. After hearing both the parties, vide order dated 12.12.2004, the learned Judge had dismissed the said application. Hence, this appeal before this Court.

Mr. Prashant Sharma, the learned counsel for the appellant, has vehemently argued that the appellant-plaintiff and the defendant-respondent No.1 are real brothers. Thus, they have equal interest and title to the property in dispute. However, the respondent No.4, 5 and 6, who happen to be aunt's children, they have sold the property in dispute to respondents No.9, 10, 11, 12, 13, 14 and 15. According to the learned counsel for the appellant, the respondents did not have a right to sell the property in dispute. He has further argued that the appellant had a strong prima facie case in his favour, but despite existence of the prima facie case, the learned Judge has still dismissed the application for temporary injunction.

On the other hand, Mr. J.P. Goyal, the learned counsel for the respondents, has contended that a number of litigations were

started by the appellant against the same set of the respondents. In those suits also, the applications for temporary injunction were dismissed by the learned trial court. For example, in Civil Suit No.3/93 titled as Navin Kumar V/s Gokul Chand, the temporary injunction was dismissed vide order dated 8.2.1994. Again a suit was filed before the learned District Judge, Baran, which was registered as Civil Misc. Suit No.14/94. However, the said suit was dismissed for non-prosecution. Similarly, another suit was also filed, which was dismissed vide order dated 19.3.1998 and the appeal therefrom was also dismissed by the first appellate court. Therefore, even the present application for temporary injunction is baseless. He has further contended that the property in dispute is not an ancestral property, but was self-acquired property, which was rightly bought by the ancestors and was subsequently transferred through a gift deed. Since the property was a self-acquired-one, the same could be transferred by the owner to the respondents. Hence, he has supported the impugned order.

We have heard both the learned counsels for the parties and have perused the impugned order.

The perusal of the impugned order would clearly reveal that a number of litigations of similar nature have been instituted by

the appellant. But in all those civil suits, the learned trial court had dismissed the application under Order 39 Rule 1 and 2 of the Code. Moreover, the learned Judge in the present case has given a detailed order discussing the very reason for dismissing the application. According to the learned Judge, part of the property was bought by one Shobha Beti from the Municipal Council, Baran, which was subsequently gifted to Gokul Chand and Radha Kishan and rest of the property was given to Sobha Beti through a will. Thus, the property was not ancestral in nature, but is self-acquired. Since the property in dispute has been transferred through the will or through the gift deed, the recipient had acquired a clean title. Therefore, the respondents had a right to sell the property to the other respondents. Since the learned Judge did not find the existence of a prima facie case in favour of the plaintiff-appellant, he has rightly dismissed the temporary injunction application. Considering the fact that the impugned order is a detailed speaking order, this Court is not inclined to interfere with the same.

In the result, there is no merit in this appeal. It is, hereby, dismissed. There shall be no order as to costs.

**(R.S. CHAUHAN), J.**

/S.S./